

**IN THE DISTRICT COURT OF THE  
PONCA TRIBE OF OKLAHOMA**

PONCA TRIBE OF OKLAHOMA	)	
Plaintiff,	)	
	)	CASE NO. CIV-2023-023
vs.	)	
	)	
PONCA TRIBE OF OKLAHOMA	)	
ELECTION BOARD	)	
Defendant.	)	

**PONCA TRIBE’S EMERGENCY MOTION FOR JOINDER OF BIA AND  
TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION**

In accordance with the Ponca Tribe’s Formal Rules of Civil Procedure Rule 19 and Informal Rules of Civil Procedure I-9, Plaintiff, the Ponca Tribe Business Committee (“Plaintiff,” “Tribe,” or “Business Committee”), acting through undesignated counsel, files this motion to join the Bureau of Indian Affairs (“BIA”) in this action and seeks a temporary restraining order to compel the BIA to remove General Election candidate Carla Carney from the list of certified candidates for the scheduled May 18, 2024 General Election. Joinder of the BIA is warranted because the BIA is currently performing the duties and roles of the Election Board in administering the 2024 General Election. The BIA took on this role because all parties to this action requested the BIA to administer the General Election, this Court entered an order memorializing this request, *See* Ex. 1, Feb. 12, 2024 Order, and the BIA formally agreed by letter on March 6, 2024 to administer the General Election. Ex. 2, March 6, 2024 Letter.

In its role of administering the General Election, the BIA violated § 5.5 of the Election Ordinance by certifying candidate Carla Carney as a candidate for the May 18, 2024 General Election for a four year term on the Business Committee. This certification was unlawful because Ms. Carney’s seat on the current Business Committee is not vacant, as she is still in

litigation over this seat, and Ms. Carney cannot simultaneously run for a new four year term on May 18, 2024, while also still occupying, although it is in dispute, her current seat on the current Business Committee. Because the BIA violated the Election Ordinance, this Court should grant this emergency request and order the BIA to remove Carla Carney from the list of certified candidates. In support of this motion, the Plaintiff offers the below Memorandum of Points and Authorities and exhibits.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **1. Procedural history of case**

#### **a. Court orders the Election Board to conduct the General Election.**

This case started on November 9, 2023, when the Plaintiff filed a Petition and Application for Injunction and Motion for Temporary Restraining Order, seeking to stop a recall election scheduled for December 16, 2023, by the Election Board. This recall election was scheduled to recall Chairman Oliver Littlecook, Vice-Chairman Robert Collins, and Business Committee member Matilda DeLaGarza. On November 9, the Court issued an Ex Parte Preliminary Injunction ordering that all actions related to the recall petition were to cease until a show cause hearing scheduled for November 14, 2023.

The Court held a show cause hearing on November 14, 2023, after which the Court made a number of findings and orders. Importantly, the Court ordered the Election Board to “begin the process of preparing for the general election and shall at all times follow the provisions of the Ponca Election Ordinance.” November 14, 2023 Order, 2.

#### **b. This Court has previously ordered the Election Board to comply with the Election Ordinance in preparing for the General Election.**

In preparation for the General Election, the Election Board held a candidate filing period for one day—the day after Thanksgiving—November 24, 2023, for only two hours. Disagreeing

with this action, on January 11, 2024, the Tribe sought relief in this Court and filed a “Motion to Compel Compliance” with the Court’s November 14, 2023 Order ordering the Election Board to reopen the candidate filing period. This motion was sought because the Election Board violated the timing requirements of the time period to register candidates, wherein the Election Board opened the registration prematurely and in violation of the law. The Court ruled that the Election Board violated the Election Ordinance, granted the Plaintiff’s motion, and ordered the Election Board to reopen the candidate filing period. *See* January 27, 2024 Amended Order Sustaining Petition for Injunction, 2 (“On the basis of admission, the Court once again ordered the procedures nullified and directed the Election Board to restart its process and to follow the procedures required in the election ordinance and in the Constitution of the Ponca Tribe of Indians.”).

**c. Business Committee suspends Election Board members, both parties seek BIA assistance to administer the General Election, and the BIA agrees to administer the Election.**

On January 30, 2024, the Tribe’s Business Committee, exercising its authority under the Election Ordinance, § 2.10(A), served a Written Notice of Suspension to Election Board members Violet Rhodd, Beverly Brown, Elizabeth Graves, and Emily Smith. The notice set a hearing for February 9, 2024, at which time the Business Committee would vote whether to suspend the four members or not. Soon after this notice was issued, on February 5, 2024, the Election Board filed an “Application for BIA to Run or Oversee the Election.” In this filing, the Election Board asked “the Court to order the Plaintiff [Business Committee] to request the BIA to run the upcoming March election as soon as possible.” Application, 2.

On February 9, 2024, the Business Committee held a suspension hearing for the Election Board members and voted to suspend the four members. Ex. 3, Resolution #06-02092024. Due

to the suspension, the Election Board had just one Board member remaining. Thus, the Election Board could not function due to the lack of a quorum, which requires three Election Board members. Election Ordinance, § 2.4 (C)(no official action can be conducted “unless a quorum of three (3) Board members his present.”). Because of this, the Business Committee passed Resolution #07-020924, Ex. 4, which sought “assistance from the [BIA] to administer the upcoming General Election set for March 16, 2024.”

In an order dated February 12, 2024, the Court issued an “Order Confirming Agreement of the Parties” which memorialized both parties position that the BIA administer the General Election, with the Court noting that there “is no evidence which would make such assistance from the Bureau of Indian Affairs unlawful.” Order, 1.

On March 6, 2024, the BIA communicated to Plaintiff by letter that the BIA agreed to officially administer the General Election. Ex. 2, March 6, 2024 Letter. In their justification for taking on this role, the BIA stated that the parties requested this action, and that the BIA’s assistance “was in the best interest of the Tribe.” March 6, 2024 Letter, 1. Notably, the BIA referenced this litigation and the Court’s order which confirmed the agreement of the parties. *Id.* By administering the General Election, the BIA is bound to follow Ponca law. *See Paula Brady v. Acting Phoenix Area Director*, 30 IBIA 294, 301, 1997 WL 316443, at \*6 (noting that the BIA “should be guided by the Tribe’s law” in a case involving elections and BIA involvement). And when carrying out its duties, the BIA “must show deference to a tribe’s reasonable interpretation of its own laws.” *Van Zile and Crawford v. Minneapolis Area Director*, 25 IBIA 163, 167, 1994 WL 67931, at \*3.

- d. BIA releases certified list of candidates for the General Election, and certifies Carla Carney as a candidate, despite Ms. Carney still claiming a right to her former seat and seeking reinstatement to this seat.**

In their role of administering the election, the BIA has taken over the role of the Election Board to certify candidates. In a notice issued on March 15, 2024, the BIA stated that the Ponca membership will vote to elect candidates to fill four seats that will run for a four year term. Ex. 5, Corrected Election Notice. On April 17, 2024, the BIA listed its Certified Candidate list for the General Election and announced that the new date for the General Election is May 18, 2024. Ex. 6, Certified Candidate List. The certified candidate list includes Carla Carney.

Carla Carney was removed from the Business Committee on November 6, 2023 for missing three consecutive Business Committee meetings. The Business Committee took this action in accordance with the Ponca Constitution, Article V, § 1 (noting if a Business Committee member fails to attend three consecutive meetings, the positions “shall be deemed vacated.”). After her removal, on November 28, 2023, Ms. Carney sued the Business Committee seeking reinstatement to her seat. *See Carney v. Ponca Business Committee et al.*, CIV-2023-024. The Ponca Tribal Court dismissed the action for lack of jurisdiction on February 6, 2024. Ms. Carney has appealed this decision and the appeal is ongoing in the Court of Indian Appeals for the Southern Plains Region. *See Case No. App-24-01.*

Ms. Carney argues that she is still a Business Committee member in her challenge to her removal. She explains in *Carney v. Ponca Business Committee* that she “is still a Business Committee Member and entitled to resume her duties as a member and Secretary-Treasurer.” Ex. 7, Carney Motion to Strike a Portion of Individual Defendants’ Reply Brief, 1-2. The Election Board, as previously constituted, took the same position as Ms. Carney. Election Board member Violet Rhodd, submitted an affidavit attached to Carney’s filing where she stated that “[t]he Election Board has never declared Carla Carney’s seat vacant.” Ex. 7, Ex. A Rhodd Affidavit, ¶ 7. Ms. Rhodd then stated that the “Election Board does not currently consider that Carla

Carney’s seat is vacant,” ¶ 12, and furthermore, “[n]othing in the Ponca Constitution or Ponca Code prohibits a sitting Business Committee member from running for a Business Committee seat of a different term, however the member cannot hold two seats at once.” ¶ 13. Ms. Rhodd then concluded that if Ms. Carney is elected to a four year term, “she will have to resign her current seat in writing in order to be sworn into office for a term ending in 2028.” ¶ 14. The BIA Election Board has assumed the same position, apparently, by allowing Ms. Carney to run for a four-year term while also pursuing court action to return to a different seat on the Business Committee.

## **2. Law**

### **a. Ponca Formal Rules of Civil Procedure, Rule 19, mandate joinder of BIA in this action.**

Rule 19A of the Ponca Formal Rules of Civil Procedure state that a “person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties.” If a person has not been so joined, “the court shall order that he made a party.” *Id.*

Here, the BIA<sup>1</sup> is required to be joined in this action because the BIA accepted the Plaintiff’s request to administer the General Election, and is now administering this Election. *See* Ex. 2. Thus, BIA has taken the place of the Election Board, who is a party to this suit. The Business Committee is seeking an injunction to compel the BIA to remove Carla Carney from the certified list of candidates for the General Election. In “the absence” of BIA being joined in

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<sup>1</sup> While the Ponca Rules of Civil Procedure do not define what a “person,” is, the Federal Rules of Civil Procedure, and its similar rule on joinder, note that a “government” can be joined to an action under Federal Rule of Civil Procedure 19. *Carlson v. Tulalip Tribes of Washington*, 510 F.2d 1337, 1339 (9th Cir. 1975).

this suit, the Business Committee cannot get complete relief because the other party in this suit, the Election Board, is not administering the election. Thus, the BIA must be joined for the Tribe to get complete relief, and joinder is necessary. *See Ryan v. Cosentino*, 793 F. Supp. 822, 824–25 (N.D. Ill. 1992) (granting joinder of state of Illinois in suit because without joinder “complete relief cannot be accorded among those already parties.”).

**b. The Business Committee meets the requirements of Rule 1-9A to order the BIA to remove Carla Carley from the Certified Candidate List for the May 18, 2024 General Election**

The Tribe seeks an equitable action against the joined party in this suit, the BIA, ordering the BIA to remove Carla Carney from the BIA’s certified list of candidates for the May 18, 2024 General Election. The law that governs injunctions, Rule 1-9A of the Ponca Tribe Rules of Civil Procedure, states that a party may ask for an injunction “requiring particular action by another party.” This order “shall be granted if the person requesting it shows that there is a good chance that he or she will win the suit and that he or she will suffer irreparable loss or injury if the injunction is not issued.” *Id.* The law requires the Plaintiff to meet two factors for an injunction: (1) a good chance that the Plaintiff will win the suit, or show success on the merits, and (2) that the Plaintiff will suffer irreparable loss or injury if the injunction is not issued. Plaintiff meets both of these factors.

**i. The Business Committee can show a good chance it will succeed on the merits**

Under the Ponca Constitution, the Business Committee exercises “all executive, legislative, and judicial powers of the Tribe.” Article VIII, § 2A. In accordance with this power, the Business Committee enacted an Election Ordinance, and delegated the power to administer elections to the Election Board, in accordance with the Ordinance. Election Ordinance, § 1.1(C). Importantly, the Election Ordinance states that the Business Committee has the “right to review”

any action taken by the Election Board under the Election Ordinance. *Id.* This “right to review” means the Business Committee considers the Election Board’s actions and can make a “correction.” Black’s Law Review, 6th ed., p. 1320 (defining “review” to mean “consideration for purposes of correction.”). The Election Board, under § 4.3 of the Election Ordinance, is responsible for certifying candidates.

The Ponca Tribe Constitution states that a Business Committee member’s term “shall be four (4) years from the date of installation of office.” Article III, § 1. In alignment with the Constitution, the Election Ordinance notes that “[a] person elected to serve as a member of the Business Committee shall be installed upon administration of the oath of office and shall serve the term or remaining term of the seat which he/she was elected or until recalled or removed pursuant to the Constitution and this Ordinance. Election Ordinance, § 5.5. The law is clear, once elected, a Business Committee member shall serve their four year term *until* recalled or removed.

Carla Carney was elected in December 2021. Her term is four years, so her term ends on December 2025, unless she is recalled or removed. Ms. Carney has not been recalled or removed, as her removal is still pending in litigation. Despite still occupying her seat, the BIA certified Ms. Carney as a four year candidate for the May 18, 2024 General Election for a different seat. This action violated the Election Ordinance, § 5.5, because Ms. Carney still has a pending challenge to occupy her current seat. It is nonsensical to allow Ms. Carney to run for a new four year term while still occupying her current seat.

Indeed, Election Board member Rhodd’s affidavit shows how nonsensical this situation is. Ms. Rhodd states that nothing is wrong with Ms. Carney running for a four year seat while still occupying her current seat, and if she is elected for a four year seat, Ms. Carney can simply then choose which seat to resign from. Rhodd Affidavit, ¶ 14. This description defies common



sense and is not lawful per the Election Ordinance. A candidate can only occupy *one seat* at a time under § 5.5. Ms. Carney cannot run for a new four year term while she still occupies her current seat. If the BIA and Ms. Carney are right, any Business Committee member could run for a four year seat while halfway through a current term, at the same time.

**ii. Business Committee will suffer irreparable loss or injury if the injunction is not issued.**

This case involves the upholding of Ponca Tribe law and the integrity of the upcoming General Election. The Election Ordinance is clear, the Business Committee has delegated power to the Election Board (now the BIA) to administer the General Election, and with this delegation, the Business Committee can “review any action.” § 1.1(C). This right to review includes the ability to undo unlawful actions taken by the BIA. *See* Black’s Law Dictionary’s definition of review (noting that review entails making a “correction.”). Federal courts note that the inability to enforce tribal laws constitute irreparable harm. *See Kiowa Indian Tribe of Oklahoma v. Hoover*, 150 F.3d 1163, 1171–72 (10th Cir. 1998) (Tribe has made showing of irreparable harm due to the “prohibition against [the] full enforcement of tribal laws, [which] significantly interferes with the Tribe's self-government.”). Furthermore, in the election context, federal courts note that the “counting of votes that are of questionable legality . . . threaten[s] irreparable harm.” *Carson v. Simon*, 978 F.3d 1051, 1061 (8th Cir. 2020) (quoting *Bush v. Gore*, 531 U.S. 1046, 1047 (2000)). Here, if an injunction is not granted, Ms. Carney will receive votes unlawfully, and the counting of these votes constitutes “irreparable harm.”

**3. Conclusion**

For the above reasons, the Tribe requests that the Court join the BIA in this action and grant injunctive relief against the BIA ordering the BIA to remove Carla Carney from the candidate list for the upcoming General Election.

Dated this 6th day of May, 2024

/s/ Joe Keene  
Joe Keene OBA #33085  
Pipestem Law, P.C.  
401 S. Boston, Suite 2200  
Tulsa, OK 74103  
Ph: 918-331-6500  
[jkeene@pipestemlaw.com](mailto:jkeene@pipestemlaw.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2024, a true and correct copy of the foregoing document was emailed and mailed to the following:

Klint A. Cowan  
Lippes Mathias  
512 NW 12th Street  
Oklahoma City, OK 73103  
Tel.: 405-204-6487  
Email: [kcowan@lippes.com](mailto:kcowan@lippes.com)  
*Attorney for Election Board*

BIA Special Election Board  
Natalie Wabaunsee, Chairperson  
Lonnie Emhoolah, Vice-Chairperson  
Stormy Bennett, Secretary  
Jessica Harkreader, Member  
Kari Hart, Member  
Southern Plains Regional Office  
P.O. Box 368 (1 Mile North of City, Highway 281)  
Anadarko, Oklahoma 73005  
[Natalie.wabaunsee@bia.gov](mailto:Natalie.wabaunsee@bia.gov)  
[Stormy.bennett@bia.gov](mailto:Stormy.bennett@bia.gov)

/s/ Joe Keene

# Exhibit 1

IN THE DISTRICT COURT OF THE  
PONCA TRIBE OF OKLAHOMA  
WHITE EAGLE, OKLAHOMA

2/12/24  
EJ

PONCA TRIBE OF OKLAHOMA )  
Plaintiff, ) Case No. CIV-2023-023  
)  
vs )  
)  
PONCA TRIBE OF OKLAHOMA )  
ELECTION BOARD, )  
Defendant. )

**ORDER CONFIRMING AGREEMENT OF THE PARTIES**

NOW on this 12th day of February, 2024, this matter comes before the Court upon the Defendant's Notice of Election Board Suspension and Request for BIA Assistance to Run Election. Being duly advised in the premises, the Court FINDS and ORDERS as follows:

1. That the Ponca Business Committee, under the authority granted it in the Constitution and Election Ordinance of the Ponca Tribe, has suspended four members of the Ponca Tribe Election Board.

2. That the Defendants herein are requesting the Court order the Ponca Tribe to request the Bureau of Indian Affairs run the upcoming general election currently scheduled for March 2024.

3. That the Plaintiffs have filed notice with the Court that the Ponca Business Committee has already made a request of the Bureau of Indian Affairs to oversee and conduct the Ponca Tribe of Oklahoma general election.

THEREFORE, as a result of the parties' agreement in the course of action to be undertaken, and the fact that the Court has been presented with no evidence which would make such assistance from the Bureau of Indian Affairs unlawful, the Court does hereby CONFIRM the agreed position of the Parties.

**IT IS SO ORDERED.**

  
MARSHA HARLAN, CHIEF JUDGE

## Exhibit 2



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Southern Plains Regional Office  
Post Office Box 368  
Anadarko, Oklahoma 73005

IN REPLY REFER TO:

Tribal Government  
Phone: (405) 247-1534  
Email: Sherry.Lovin@bia.gov

Honorable Oliver LittleCook  
Chairman, Ponca Tribe of Indians of Oklahoma  
101 White Eagle Drive  
Ponca City, Oklahoma 74601

MAR 6 2024

Dear Chairman LittleCook:

This is in response to your letter dated February 9, 2024, transmitting Ponca Business Committee Resolution # 07-020924, adopted February 9, 2024, both of which requested the Southern Plains Regional Office's assistance in holding the constitutionally required 2024 Ponca tribal election. The Regional Office has also been provided with a copy of documents wherein the Ponca Tribal Court and the parties to the cited litigation have also determined that election assistance is in the best interest of the Tribe. *Ponca Business Committee v. Ponca Election Board*, Case No. CIV-2023-023, issued February 12, 2024, et al.

Accordingly, the Region has determined that the executive, legislative, and judicial branches of the Ponca Tribe of Indians of Oklahoma have requested the Regional Office's assistance in the subject election. The request is hereby granted.

The Regional Office's point of contact for this matter is Sherry Lovin, Regional Tribal Government Services Officer. You should note that in this unusual circumstance, some variance from the Tribe's usual procedures may be necessary and that such variances will not constitute any precedent for the Ponca Tribe. Ms. Lovin will be in contact with the appropriate tribal officials at her earliest opportunity.

Copies of this letter are being provided the Ponca Business Committee members, the tribal court, and the parties to the cited litigation.

## APPEAL RIGHTS

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, MS-300-QC, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.20 - 4.31 (copy enclosed). Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. Your notice of appeal must be original; no facsimile copies (faxes) will be accepted. The notice of appeal should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must

send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 1849 C Street, N.W., MS 4141, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board must certify that you have sent copies to these parties. If you are not represented by an Attorney, you may request assistance from this office in the preparation of your appeal. If you file a notice of appeal, the Board will notify you of further appeal procedures. If the notice of appeal is not timely filed, this decision will become final for the Department of the Interior at the expiration of the 30 day appeal period. A timely appeal will stay this decision. No extension of time can be granted for the filing of the notice of appeal.

I hereby certify that I have mailed a copy of this letter to all persons listed on the enclosed Certification of Mailing to Interested Parties.

Sincerely,

A handwritten signature in blue ink that reads "R. Paul Morgan". The signature is written in a cursive style with a long horizontal stroke at the end.

Regional Director

Enclosures



CERTIFICATION OF MAILING TO INTERESTED PARTIES

The undersigned certifies that on this day, a true and correct copy of the *Letter Dated March 6, 2024, requesting the assistance of the Bureau of Indian Affairs to conduct the Ponca Tribe General Election of 2024* was mailed and/or emailed to the following interested parties:

Joe Keene, Attorney at law  
via email: [jkeene@pipestemlaw.com](mailto:jkeene@pipestemlaw.com)  
*\*Attorney General for the Ponca Tribe*

Klint Cowan, Attorney at law  
via email: [kcowan@fellerssnider.com](mailto:kcowan@fellerssnider.com)  
*\*Attorney for the Ponca Tribe  
Election Board*

Oliver Littlecook, Chairman  
Ponca Tribe of Indians of Oklahoma  
Business Committee  
via email: [oliver.littlecook@ponca-nsn.gov](mailto:oliver.littlecook@ponca-nsn.gov)

Honorable Marsha L. Harlan  
Ponca Tribal District Court  
Trial Judge  
via email: [harlanlaw@yahoo.com](mailto:harlanlaw@yahoo.com)

Robert Collins, Vice Chairman  
Ponca Tribe of Indians of Oklahoma  
Business Committee  
via email: [robert.collins@ponca-nsn.gov](mailto:robert.collins@ponca-nsn.gov)

Conor Cleary, Field Solicitor  
Tulsa Field Office  
Email: [conor.cleary@sol.doi.gov](mailto:conor.cleary@sol.doi.gov)

Leota White, Committee Member  
Ponca Tribe of Indians of Oklahoma  
Business Committee  
via email: [leota.white@ponca-nsn.gov](mailto:leota.white@ponca-nsn.gov)

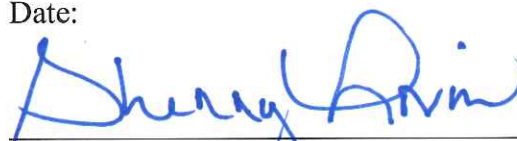
Darryl LaCounte, Director  
Bureau of Indian Affairs  
Main Interior Building  
1849 "C" Street, NW  
Washington, DC 20240

Earl Howe III, Committee Member  
Ponca Tribe of Indians of Oklahoma  
Business Committee  
via email: [earl.howe@ponca-nsn.gov](mailto:earl.howe@ponca-nsn.gov)

Deborah Margerum, Committee Member  
Ponca Tribe of Indians of Oklahoma  
Business Committee  
via email: [deborah.margerum@ponca-nsn.gov](mailto:deborah.margerum@ponca-nsn.gov)

Matilda Delagarza, Committee Member  
Ponca Tribe of Indians of Oklahoma  
Business Committee  
via email: [matilda.delegarza@ponca-nsn.gov](mailto:matilda.delegarza@ponca-nsn.gov)

Date:



Sherry Lovin, Tribal Government Officer  
Southern Plains Region



# Exhibit 3



# Ponca Tribe of Oklahoma

*"Rich in Culture and Tradition"*

Equal Opportunity Employer

101 White Eagle Drive • Ponca City, Oklahoma 74601 • phone: (580) 763-0120 • Fax: (580) 762-8104

RESOLUTION #: 06-02092024

## FORMAL RESOLUTION

Suspension of the Ponca Tribal Election Board Member(s) on February 9<sup>th</sup>, 2024.

WHEREAS, the Ponca Tribe of Indians of Oklahoma ("Ponca Tribe") is a federally recognized Indian Tribe with headquarters located in White Eagle, Oklahoma; and

WHEREAS, the Business Committee of the Ponca Tribe ("Business Committee") is authorized to conduct and transact business of the Ponca Tribe consistently with the Constitution of the Ponca Tribe ("Ponca Constitution") duly adopted on September 20, 1950, and amended from time to time thereafter; and

WHEREAS, the Ponca Constitution vests executive, legislative, and judicial powers of the Tribe with the Business Committee; and

BE IT FURTHER RESOLVED THAT, the Ponca Tribe Business Committee held a hearing, on this day, made motion to Suspend the following Ponca Tribal Election Board Member(s) :

- Violet Rhodd
- Beverly Brown
- Elizabeth Graves
- Emily Smith

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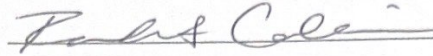


CERTIFICATION

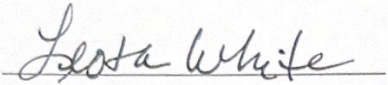
We, the undersigned, hereby affirm that an official meeting of the Ponca Tribal Business Committee, held on the 9<sup>th</sup> Day of February 2024, at which a quorum was present, the above resolution was presented and approved by a vote of 6 FOR; 0 AGAINST; 0 ABSENT; 0 ABSTAIN



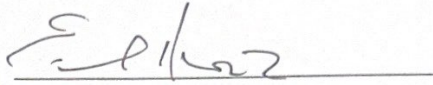
Oliver Little Cook, Chairman



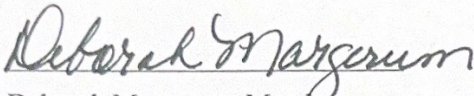
Robert Collins, Vice-Chairman



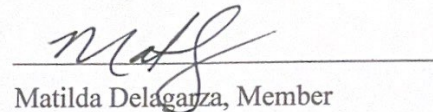
Leota White, Secretary Treasurer



Earl Howe, III, Member



Deborah Margerum, Member



Matilda Delagarza, Member

# Exhibit 4





# Ponca Tribe of Oklahoma

*"Rich in Culture and Tradition"*

Equal Opportunity Employer

101 White Eagle Drive • Ponca City, Oklahoma 74601 • phone: (580) 763-0120 • Fax: (580) 762-8104

RESOLUTION #: 07-020924

## FORMAL RESOLUTION

Assistance from BIA to administer General Election set for March 16<sup>th</sup>, 2024.

WHEREAS, the Ponca Tribe of Indians of Oklahoma ("Ponca Tribe") is a federally recognized Indian Tribe with headquarters located in White Eagle, Oklahoma; and

WHEREAS, the Business Committee of the Ponca Tribe ("Business Committee") is authorized to conduct and transact business of the Ponca Tribe consistently with the Constitution of the Ponca Tribe ("Ponca Constitution") duly adopted on September 20, 1950, and amended from time to time thereafter; and

WHEREAS, the Ponca Constitution vests executive, legislative, and judicial powers of the Tribe with the Business Committee; and

WHEREAS, the following member(s) of the Ponca Tribe Election board were suspended on February 9<sup>th</sup>, 2024, by resolution; and

- Violet Rhodd
- Beverly Brown
- Elizabeth Graves
- Emily Smith

WHEREAS, The Ponca Tribe Election Board no longer forms a quorum as of February 9<sup>th</sup>, 2024; and

WHEREAS, The Ponca Tribe Election Board can no longer function; and

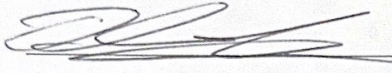
BE IT FURTHER RESOLVED THAT, the Ponca Tribe Business Committee, on this day, made motion to seek assistance from the Bureau of Indian Affairs (BIA) to administer the upcoming General Election set for March 16<sup>th</sup>, 2024.

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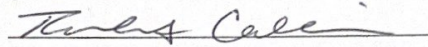


CERTIFICATION

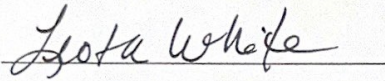
We, the undersigned, hereby affirm that an official meeting of the Ponca Tribal Business Committee, held on the 9<sup>th</sup> Day of February 2024, at which a quorum was present, the above resolution was presented and approved by a vote of 6 FOR; 0 AGAINST; 0 ABSENT; 0 ABSTAIN



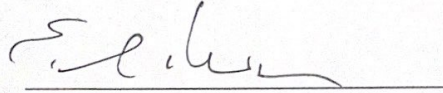
Oliver Little Cook, Chairman



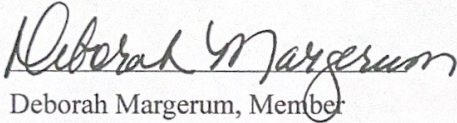
Robert Collins, Vice-Chairman



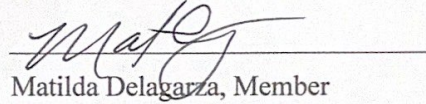
Leota White, Secretary Treasurer



Earl Howe, III, Member



Deborah Margerum, Member



Matilda Delagarza, Member

# Exhibit 5



## United States Department of the Interior

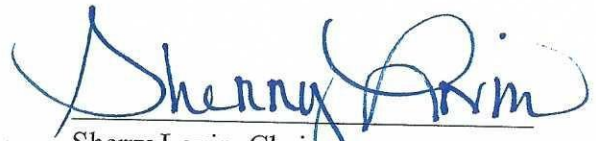
BUREAU OF INDIAN AFFAIRS  
Southern Plains Regional Office  
Post Office Box 368  
Anadarko, Oklahoma 73005

IN REPLY REFER TO:  
Tribal Government  
Phone: (405) 247-1542 or (405) 247-1534

### **CORRECTED ELECTION NOTICE**

**GENERAL ELECTION – APRIL 20, 2024  
PONCA TRIBE OF INDIANS OF OKLAHOMA**

Tribal members of the Ponca Tribe of Indians of Oklahoma are hereby advised that the date of the General Election of March, 2024 has changed. The General Election will be held on **Saturday, April 20, 2024**, for the purpose of voting on electing members to fill the four (4) expired terms of office of the Ponca Tribe of Indians of Oklahoma, Business Committee. The General Election will be conducted by the Bureau of Indian Affairs for the Ponca Tribe of Indians of Oklahoma by Resolution No. 07-020924 enacted by the Ponca Tribal Business Committee and by an Order of the Ponca Tribal Court in Case No. CIV-2023-023.

  
Sherry Lovin, Chairperson  
Ponca Tribal General Election

**THIS IS A FEDERAL DOCUMENT.  
PLEASE DO NOT REMOVE.**





# Exhibit 6



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Southern Plains Regional Office  
Post Office Box 368  
Anadarko, Oklahoma 73005

**IN REPLY REFER TO:**

Tribal Government  
Phone: (405) 247-1542  
Email: [Natalie.Wabaunsee@bia.gov](mailto:Natalie.Wabaunsee@bia.gov)

# CERTIFIED CANDIDATE LIST

## GENERAL ELECTION PONCA TRIBE OF INDIANS OF OKLAHOMA

- BELL, SARA EMILY
- CALLS HIM, CHRISTINE
- CARNEY, CARLA
- COLLINS, ROBERT
- DE LA GARZA, MATILDA LUCILLE
- GARCIA, LUCINDA MARIE
- HOWE III, EARL SANFORD
- KEMBLE, MOLLY
- KEMBLE, RITA RENE'
- KOMESATADDLE, CHER
- LIEB, DARCI RENEE
- LIEB, KINSEL V.
- NO EAR JR., ROLAND JACK
- RHODD SR., BOBBY
- SHERRON, DANIEL
- SIMPSON, AMOS
- SIMPSON JR., SCOTTY
- WILSON, JUDITH

The New Election Date will be May 18<sup>th</sup>, 2024.

Date: 04/17/2024

Chairwoman, Natalie Wabaunsee  
Ponca Tribe of Indians of Oklahoma  
General Election

# Exhibit 7

**IN THE TRIBAL DISTRICT COURT OF  
THE PONCA TRIBE OF OKLAHOMA**

CARLA CARNEY,

Plaintiff,

v.

CASE NO. CIV-2023-024

PONCA BUSINESS COMMITTEE,  
OLIVER LITTLECOOK, SR.  
Chairman,

OLIVER LITTLECOOK SR.,  
Individually and as  
Ponca Business Committee Member,

ROBERT COLLINS,  
Individually and as  
Ponca Business Committee Member,

MATILDA DELAGARZA,  
Individually and as  
Ponca Business Committee Member,

DEBORAH MARGERUM.,  
Individually and as  
Ponca Business Committee Member,

LEOTA WHITE,  
Individually and  
Ponca Business Committee Member, and

EARL TREY HOWE III  
Individually and  
Ponca Business Committee Member,

Defendants.

**MOTION TO STRIKE A PORTION OF INDIVIDUAL DEFENDANTS' REPLY BRIEF**

Plaintiff moves the Court to strike that portion of the Ponca Tribe Individual Officials' Reply in Support of Motion to Dismiss ("Reply") that claims her case against them is moot because Plaintiff filed to be a candidate for a seat on the Business Committee for the 2024-2028

term. The Reply at subsection 1. raises the mootness issue for the first time, and is outside the arguments presented in Plaintiff's Response to the Motion to Dismiss. Furthermore, the statements contained therein and argued to the Court are inaccurate, speculative and irrelevant to the issues presented in the case.

Plaintiff's suit alleges the individual defendants acted *ultra vires* in holding illegal meetings and taking actions at those meetings and elsewhere outside their duties and in violation of Plaintiff's civil rights. For those reasons, she has asked the Tribal Court to enjoin them from continuing to bar Plaintiff from fulfilling the duties of her offices. Ponca and other tribal courts make clear such relief is appropriate against them in both capacities and withstands sovereign immunity claims.. *See, e.g., Somers v. Oneida General Manager*, No. 05-TC-056, (Oneida Tribal Court 2006)(Tribe's inherent sovereign immunity permits suits by members against tribal entities and officials for prospective injunctive relief from alleged violations of the tribal constitution and civil rights). She further makes claims against the individuals sounding in tort, and seeks damages against them. The individual Defendants maintain they are entitled to sovereign immunity, which is the basis for their Motion to Dismiss.<sup>1</sup>

In their Reply, Defendants for the first time raise the issue of mootness, claiming that because Plaintiff has filed to be a candidate for a Business Committee seat beginning in March 2024, she has "conceded that she is no longer a member of the Business Committee and cannot now seek reinstatement." Nothing could be further from the truth. Plaintiff has consistently maintained she is still a Business Committee Member and entitled to resume her duties as a

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<sup>1</sup> Plaintiff in her Response brief provides the Court with federal and tribal law holding that Defendant officials sued in their personal capacity come to court as individuals and, although entitled to certain personal immunity defenses, cannot claim sovereign immunity from suit, so long as the relief is sought not from the government treasury. Plaintiff has not sued the Ponca Tribe nor seeks monetary damages from its treasury.

member and Secretary-Treasurer. Since November 28, 2023, she has continuously and urgently implored this Court to restrain and enjoin the Defendants from continuing to physically bar her from her office and meetings, and from improperly seeking to fill her seat. Defendants' use of term "reinstatement"- the act of giving someone back something they have lost- is not technically correct here, because Plaintiff seeks to have the Court declare the Defendants' removal attempts were extra-Constitutional and void. This would place Plaintiff in the position of never being out of her offices, and therefore no reinstatement is needed. That the Defendants have continuously delayed this Court from ruling on the injunctive relief sought does not negate the fact that Plaintiff is still pursuing that relief as well as damages, and the issues are not moot.<sup>2</sup>

At the February 2, 2024 hearing on the Motions to Dismiss, Defendants' counsel argued the mootness issue. Plaintiff's counsel maintained the "what-ifs" presented about her seeking another office are speculative and irrelevant.<sup>3</sup> As Ponca Election Board Chair Violet Rhodd makes clear in her attached affidavit, Carla Carney's Business Committee seat has not been declared vacant, and she is not seeking to fill her own unexpired seat. (Affidavit of Violet Rhodd, attached as Exhibit "A"). Rather, she had filed to run for one of four distinct open seats that are the subject of the March 16, 2024 election. If she is certified to run, and if she wins and becomes a Business Committee member-elect, she would have to resign her current seat in order to be sworn in to that seat. *See* Exhibit "A" at ¶14. If she is not successful, she would remain in her current Council position until 2026.<sup>4</sup> Defendants' claims that any ruling by the Court other than dismissal will

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<sup>2</sup> Defense counsel conceded at hearing on December 6, 2023 there are fact issues surrounding the claims against the Individual Defendants. This further supports Plaintiff's position that the claims against them must develop through discovery and further court proceedings.

<sup>3</sup> Defendants' Reply goes so far as to suggest that Plaintiff should not be allowed to maintain her action against the individual defendants and run for election. This issue is not before the Court.

<sup>4</sup> This scenario plays out in tribal, state and federal elections frequently. For example, in the 2022 Osage Nation elections, a member of that Nation's legislative body ran for another office while sitting as a member of that body

cause “troublesome consequences” is incorrect and ironic given the many devastating consequences Defendants have forced upon the Plaintiff and the Ponca Tribe as a result of their actions. Inaccurate speculation about issues that were not raised until the Reply and are irrelevant to the pending motions should not be considered by the Court.

What is relevant is the continuing inability of the Business Committee to act in a legally official manner with respect to Plaintiff. For example, Plaintiff, Ponca tribal members and Ponca Election Board members attempted to attend a purported Ponca Business Committee meeting on Friday, December 8, 2023. The Election Board Chair attests that she saw no notice or agenda posted or circulated prior to the meeting. *See Exhibit “A” at ¶8.* At the beginning of the gathering, the Chairman declared yet again this was an “informal” meeting and therefore didn’t require notice, an agenda, nor minutes. He told the Election Board members to stay, but barred Plaintiff from attending that meeting and told her to leave the room where the gathering was being held. The Board recorded the meeting, and the Committee proceeded to attempt to extract official action from the Board. The Board Chair asked the Business Committee members in attendance to provide them official documentation to show that Carla Carney had been removed or suspended from her Business Committee seat or missed meetings such that her seat should be declared vacant. She states that to date the Election Board has received nothing that warrants it doing so. *See Exhibit “A” at ¶¶ 6,10.* At the end of the meeting, with all attendees present, the Chair and another Board member again requested something in writing about Carla Carney’s status on the Committee so they could undertake their Constitutional duties. The Business Committee Chairman couldn’t provide anything, but told them Plaintiff’s status “didn’t matter” because the

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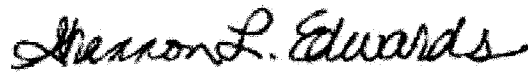
and lost. He returned to his unexpired Congressional seat. Another sitting member ran and was elected to another office. He resigned his Congressional seat, which was then declared vacant and filled for the remainder of his term.



issue would be decided in the upcoming election, something the Election Board disputes. *See* Exhibit “A” at ¶¶ 9, 12. Around that same time, the Tribe was issuing checks which bore Plaintiff’s signature as Secretary-Treasurer. *See* Checks, attached as Exhibit “B”. The individual defendants’ cannot validly claim Plaintiff no longer holds her office, then act when convenient as if she does. The Defendants’ flaunting of the clear dictates of the Ponca Constitution, as well as their continuing violation of Plaintiff’s civil rights, is staggering and underscores the urgent need to restrain their illegal actions.

WHEREFORE, Plaintiff requests the Court strike any part of the individual defendants’ Reply that argues that Plaintiff has resigned her seat on the Business Committee and that her claims against them are moot.

Respectfully Submitted,

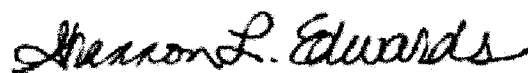


Shannon Edwards  
Shannon Edwards  
Telephone: (405) 850-6377  
[sedwards@airosurf.com](mailto:sedwards@airosurf.com)  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing document was emailed on the 9th day of February, 2024 to:

Joe Keene  
PIPESTEM LAW, P.C.  
401 S. Boston Ave, Suite 2200  
Tulsa, OK 74103



Shannon Edwards  
Shannon Edwards

**AFFIDAVIT OF VIOLET RHODD**

Violet Rhodd, being duly sworn states as follows:

1. I am the Chairman of the Ponca Tribal Election Board ("Board").
2. I was elected by the Ponca People in October 2023 and sworn in thereafter. I was sworn in again the week of November 13 by Judge Marsha Harlan. I was elected Chair by the Board members. My term of office runs until October 2025.
3. The duties and responsibilities of the Board are governed by the Ponca Constitution and the Ponca Tribal Election Law.
4. Our Board duties include planning for and holding Business Committee and Election Board Elections, accepting recall petitions, verifying petition signatures, holding recall elections, declaring Business Committee seats vacant when appropriate in order, and holding an election to fill a vacant Business Committee seat.
5. In order to have a seat declared vacant under Article V- Section 1. of the Ponca Constitution, and call an election for filling the unexpired term, the Board must be presented official information in writing that shows a Business Committee member has vacated his/her seat because the Business Committee member has:
  - a. Died; or
  - b. Resigned; or
  - c. Been suspended or recalled by a vote of the Ponca Tribal membership; or
  - d. Been found guilty of a felony by any Court of competent jurisdiction following all appeals; or
  - e. Been found guilty by any Court of competent jurisdiction following all appeals of a misdemeanor involving dishonesty, moral turpitude or of accepting a bribe; or
  - f. Moved from Kay or Noble County; or
  - g. Failed to attend three (3) consecutive Business Committee meetings without proper cause.
6. The Board has never received official information that Business Committee Member Carla Carney has met any of the above criteria.

7. The Election Board has never declared Carla Carney's seat vacant and has not called an election for filling her unexpired term.

8. Board members attended a purported joint Business Committee/Election Board meeting on December 8, 2023 which was recorded. At that time, I asked to see the Business Committee Notice and Agenda of the meeting asked and who was going to take minutes. No one responded. Then the Chairman of the Business Committee, Oliver Littlecook, Sr., announced that the meeting was an "informal" meeting between only the Business Committee member and the Election Board members. so no one needed to take minutes. He also told the Ponca Tribal members who were there that they not allowed to attend the meeting and had to leave the room.

9. At the end of the meeting, I asked Chairman Oliver Littlecook, Sr. if there was documentation that Carla Carney had been suspended, removed or had missed three consecutive Business Committee meetings without proper cause. He told me that he would get back to the Board on that, but that it didn't matter because her seat would be decided in the upcoming election.

10. I as well as Election Board member Elizabeth Graves, in the presence of all Election Board and Business Committee members in attendance, again stated the Board needs something in writing from the Business Committee regarding Carla Carney's status to act. To this day, nothing has been received.

11. The Election Board is in the process of preparing to hold the 2024 Election for Ponca Tribe for four seats on the Ponca Business Committee.

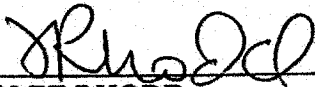
12. The Election Board does not currently consider that Carla Carney's seat is vacant, so her successor is not scheduled to be elected at the March 2024 election.

13. Nothing in the Ponca Constitution or Ponca Code prohibits a sitting Business Committee member from running for a Business Committee seat of a different term, however that member cannot hold two seats at once.

14. Carla Carney is a candidate for Business Committee for a four year term in the upcoming Business Committee election. Should she be elected, unless her seat is declared vacant, she will have to resign her current seat in writing in order to be sworn into office for a term ending in 2028.

15. In the event she resigns, the Board will declare her seat vacant and will hold a special election for remaining term of that seat thereafter.

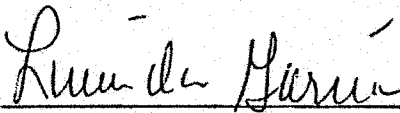
FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
VIOLET RHODD

STATE OF OKLAHOMA                    )  
  )  
COUNTY OF KAY                        )     SS

BEFORE ME, the undersigned notary, on this day, personally appeared Violet Rhodd, a person whose identity is known to me, and states that the information contained therein is true and correct to the best of her knowledge, information and belief.

Subscribed and sworn to before me on the 5<sup>th</sup> day of February, 2024

  
\_\_\_\_\_  
Notary Public

